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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1928

No. ~~5~~ 17

KARL HERBRING,
Appellant,

vs.

CLARE A. LEE,
Appellee.

Statement Supporting Jurisdiction

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OCTOBER TERM, 1928

No. 590

KARL HERBRING,

Appellant,

vs.

CLARE A. LEE,

Appellee.

Statement Supporting Jurisdiction

This case presents only one question, viz.:

Are the constitutional rights guaranteed to the appellant under the provisions of Section 1 of the 14th Amendment to the Constitution of the United States

violated by paragraph 8 of Section 6388, Oregon Laws?

The Supreme Court of the State of Oregon decided that appellant's constitutional rights were not violated by the Oregon Law, on June 17, 1928 (Record, p. 20), and ordered this proceeding dismissed.

Appellant thereupon filed his application for a rehearing on August 4, 1928 (Record, p. 33), and thereafter, on October 2, 1928 (Record, p. 37), this petition was denied, without opinion.

On October 14, 1928 (Record, p. 38), appellant presented his petition for appeal, which was granted on the same day.

Title 28, Sec. 344, paragraph (a) U. S. C. A., provides that "where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

The judgment is final; the Supreme Court of Oregon, the highest court of that State.

That this question was the only question presented to the Supreme Court of Oregon is shown by the opinion (Record, p. 20), wherein it is stated:

> "The attack is made by respondent upon the validity of subdivision 8, Sec. 6388, Oregon Laws,

as in violation of Sec. 20, Article I, of the Constitution of Oregon. . . . .It is also claimed that the provision is repugnant to the 14th Amendment of the Constitution of the United States, which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, or deny to any person within its jurisdiction the equal protection of the laws."

This Court has jurisdiction of this appeal. *Home Insurance Company vs. Augusta, Georgia*, 93 U. S. 116; 23 L. Ed. 825.

The initiation of this proceeding is statutory. Under the Oregon "Insurance Code" (Sections 6322, *et seq.*, Oregon Laws,) anyone desiring to write insurance as an agent must first obtain an agent's license; he makes application therefor upon a form supplied by the Insurance Commissioner, in which he is required to give in particular detail his business and personal history; he forwards this to the commissioner with the statutory fee for the license, $2.00; if the commissioner denies the application, he files in his own office an order, giving the applicant a copy thereof, and if the applicant desires to appeal to the courts therefrom, he does so by serving and filing a notice of appeal and bond, to which the commissioner responds by certifying to the Court his reasons therefor and the Court thereupon hears and determines the matter. (Section 6335).

The law provides that the first agent making application to write insurance in any particular com-

pany in cities having a population of less than 50,000, and the first two agents applying in larger cities may obtain their agent's license upon the payment of an annual license fee of $2.00 but that all others must pay an annual license fee of $500.00 (Section 6388).

From its inception this matter was intended to test the constitutionality of this law.

Appellant made his application upon the form furnished by Appellee. This contains the information required by the law to be furnished by the "applicant" (Section 6333,) and begins: "I hereby make application" although the paper is entitled "Agents qualification report" and the appellee required the Insurance Company to sign and file with him another paper not provided for by the law and which is entitled "Application".

The appellee then refused to grant the application unless the $500.00 fee was paid, there being two other persons in Portland already licensed to write insurance in this company. The appellant then appealed in the statutory manner to the Courts.

The Circuit Court of Marion County held the law to be unconstitutional, which decision was reversed by the Supreme Court of Oregon.

The appellee takes the position that the law in question is a *condition precedent* to the right of a *foreign insurance company* to do business in Oregon and that

therefore the Constitution has no application. In this position he was sustained by the Supreme Court of Oregon.

The appellant's position is that the obtaining of an *agent's* license, while a condition precedent to the right of the *agent* to do business has no bearing whatever upon the rights or privileges of the corporation, since the law requires the corporation to obtain a license of its own, separate and distinct from the agent's license, and based upon the financial responsibility of the company: that the law in question is an unreasonable and unwarrantable interference with the right of the individual to carry on a legitimate business, and class legislation in that it is an attempt to monopolize the insurance agency business.

GUY E. KELLY,

Attorney for Appellant.